RECORD

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

GOLDEN EAGLE WESTERN LINES, INC., a corporation,

Appellee,

vs,

JOHN D. BINGAMAN, as Commissioner of Revenue of the State of New Mexico; JUAN N. VIGIL, as State Comptroller of the State of New Mexico; FRANK H. PATTON, as Attorney General of the State of New Mexico; JUANITA HILL, as State Gasoline Tax Collector of the State of New Mexico, and CLYDE TINGLEY, as Governor of the State of New Mexico,

Appellants.

No. 520

## REPLY BRIEF OF APPELLANTS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW MEXICO

ATTORNEYS FOR APPELLEE

E. R. WRIGHT,
Santa Fe, New Mexico.

EARL A. BAGBY,
2600 Board of Trade Bldg.
Chicago, Ill.

IVAN BOWEN,
Rand Tower
Minneapolis, Minn.

ATTORNEYS FOR APPELLANTS

FRANK H. PATTON,
Attorney General,
Santa Fe, New Mexico.

J. R. MODRALL,
Assistant Attorney General
Santa Fe, New Mexico

QUINCY D. ADAMS,
Assistant Attorney General
Santa Fe, New Mexico.

SANTA FE NEW MEXICAN PUBLISHING CORP.

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

---

GOLDEN EAGLE WESTERN LINES, INC., a corporation,

Appellee,

vs.

JOHN D. BINGAMAN, as Commissioner of Revenue of the State of New Mexico; JUAN N. VIGIL, as State Comptroller of the State of New Mexico; FRANK H. PATTON, as Attorney General of the State of New Mexico; JUANITA HILL, as State Gasoline Tax Collector of the State of New Mexico, and CLYDE TINGLEY, as Governor of the State of New Mexico,

Appellants.

No. 520

---

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW MEXICO

---

## REPLY BRIEF OF APPELLANTS

---

### PRELIMINARY STATEMENT

It is not the intention of appellants in filing this Reply Brief to repeat arguments made in their original brief or to enlarge upon such arguments, but it is our intention only to answer the new arguments and theories advanced by appellee in its Answer Brief which have not been heretofore touched upon by appellants and which for the most part were not even advanced in the trial of this case before the lower court.

## PROPOSITIONS OF LAW

### I. REPLIES TO PROPOSITIONS OF LAW RAISED BY APPELLEE'S POINT I.

(a) Appellants do not concede that, were it not for the provisions of Chapter 31, 1931 Session Laws of New Mexico and amendments thereto, the gasoline tax acts here under consideration should not be construed as compensation for the use of the public highways.

(b) There is statutory authority for disposing of the proceeds of the gasoline use tax imposed by Chapter 176, 1933 Session Laws of New Mexico.

(c) Chapter 176, 1933 Session Laws of New Mexico, can be construed as exacting compensation for the use of public highways without violating Section 16, Article IV, of the New Mexico Constitution.

### II. REPLIES TO PROPOSITIONS OF LAW RAISED BY APPELLEE'S POINT II.

(a) Chapter 31, 1931 Session Laws of New Mexico as amended, applies both to the sales tax and the use tax on gasoline.

(b) Even if Chapter 31, 1931 Session Laws of New Mexico as amended, does not by its terms specifically apply to the gasoline use tax, nevertheless when construed with Chapter 176, 1933 Session Laws of New Mexico, it determines the character of the New Mexico gasoline sales and use taxes to be exactions of compensation for the use of public highways.

(c) Chapter 31, 1931 Session Laws of New Mexico as amended, and Chapter 176, 1933 Session Laws of New Mexico, may be construed in *pari materia* without violating Section 18 of Article IV, of the New Mexico Constitution.

### III. REPLIES TO PROPOSITIONS OF LAW RAISED BY APPELLEE'S POINT V.

(a) Administrative provisions of Chapter 176,

Laws of 1933, were held by the lower court to be appropriate to the enforcement of the statute.

(b) Appellants have no intention of requiring appellee to domesticate in New Mexico.

## MATERIAL STATUTORY PROVISIONS

The following New Mexico statutes are considered material to the arguments made in this brief and are quoted in full in the Appendix:

A portion of Section 6, Chapter 96, Laws of 1929, (Section 60-201, 1929 Compilation). See Appendix "1".

Chapter 162, Session Laws of 1933. See Appendix "2".

A portion of Section 1, Chapter 154, Laws of 1919, (Section 64-316, 1929 Compilation). See Appendix "3".

A portion of Chapter 144, Laws of 1931, (Sections 1 and 3). See Appendix "4".

A portion of Chapter 30, Session Laws of 1933, (Sections 1 and 3). See Appendix "5".

## APPELLANTS' REPLY TO PROPOSITIONS OF LAW RAISED BY APPELLEE'S POINT I.

With reference to Point I. of our original brief we wish to make our position absolutely clear. We deny the statement in Appellee's Brief that we admit that the gasoline taxing act here under consideration "should be construed • • • not as compensation for the use of the public highways, were it not for the provisions of Chapter 31, 1931 Session Laws of New Mexico, and the amendments thereto." (Pages 11 and 12, Appellee's Brief) Neither do we concede that the Supreme Court of New Mexico has made any such holding in the cases of Breece Lumber Company vs. Mirabal, 34 N. M. 643, 287 Pac. 699, and Transcontinental & Western Air, Inc., vs. Lujan, 36 N. M. 64, 8 Pac. (2d) 103. The Supreme Court of New Mexico has never had occasion to pass upon the question of whether or not our gasoline taxing statutes were intended to exact compensation from highway users for the use of state owned facilities. The cases above referred to merely decide that under the laws existing at the time the causes of action ac-

crued, non-users of the highways must pay the tax. The same thing is true today. The only difference now is that such non-users are entitled to a refund of the taxes so paid. This is a difference which greatly strengthens the appellants' position but one which we do not consider absolutely essential. See Sparling vs. Refunding Board, —— Ark. ——, 71 S. W. (2d) 182. The gasoline tax acts in Arkansas at the time this case was decided imposed the tax on others than those who used the highways but the Supreme Court of Arkansas held that the legislature was justified in so imposing the tax in order to avoid fraud and imposition and that the tax was for the privilege of using the highways. In the case of State vs. Johnson, 138 South. 503, 173 La. 669, the Louisiana gasoline tax also applied to non-users of the highway. Nevertheless, the Louisiana Supreme Court upheld it against the same attack now being made here and upon the grounds which we are now urging.

Appellee for the first time claims that there is no New Mexico statute disposing of the proceeds of the use tax imposed by Chapter 176, Laws of 1933. This argument was not made to the Court below. Judge Bratton in his dissenting opinion says: (Tr. 37 and 38)

> "No argument is presented with respect to the application of the funds derived from the tax on the sale and that on the use of gasoline. All parties assume that the funds derived from both sources are applied, first, to the discharge of outstanding highway debentures and then to the construction, operation and maintenance of public highways. (fol. 53) The law has been uniformly administered in that manner and it, therefore, is unnecessary to turn aside for the purpose of considering whether there is any distinction between the uses to which the two classes of revenue may be devoted."

In referring to the 1929 use tax (Section 1, Chapter 29, Laws of 1929) the Supreme Court of New Mexico in the Breece Lumber Company vs. Mirabal case, supra, said:

> "It is likewise true that the entire proceeds of the

tax are devoted by statute to the payment of such bonds and debentures as may have been issued by the state to secure a fund with which to build and improve the highways of the state."

The only statute to which the Court could have referred is the one to which we have already called this Court's attention, namely, Section 60-205, 1929 Compilation, (Section 2, Chapter 20, Laws of 1927). Considering the long administrative construction of this statute by those charged with its enforcement as well as the construction placed upon it by the Supreme Court of the state, there seems to be little doubt that it provides the means for distributing the proceeds of the use tax imposed by Chapter 176, Session Laws of 1933. (See Section 13, Chapter 176, Laws of 1933; page 42, Appellee's Brief.)

Appellee makes a statement at page 14 of its brief that the proceeds of the sales tax are "payable not entirely for highway purposes but payable on bond and debenture obligations". Since the bonds and debentures to be paid out of such proceeds were issued for the purpose of securing a fund with which to build and improve roads, it seems obvious to us that the payment of such bonds and debentures is also "for highway purposes". (See Breece Lumber Company vs. Mirabal, supra; also Appendices "3", "4", and "5" of this brief.

Appellee also cites Section 16 of Article IV of the New Mexico Constitution providing that the subject of every bill must be clearly expressed in its title. We hardly see the relevancy of this provision to the facts in the present case. Apparently appellee makes the contention that if the gasoline taxing statute here involved was intended to exact compensation for the use of the highways, such intention should have been expressed in the title of the act. We have not been referred to any New Mexico cases which have so held. We apprehend that the title of the taxing statute may clearly express its subject without going to the extent of describing the exact character and nature of the tax imposed or applying any particular name to it. The New Mexico cases cited by appellee in this connection do not support its contention.

We further call attention to the title of Chapter 176, Laws of 1933, which describes the act as "An Act to Codify and Revise the Gasoline and Motor Fuels Excise Tax Laws; to Define Gasoline and Motor Fuels and Other Terms; to Levy an Excise Tax of Five Cents (5c) per Gallon; * * *" (See Appendix "G", page 38, Appellee's Brief). It will be noted that the tax is not described as an excise tax on the use of gasoline. The term "excise tax" as used in the title of the bill would include a tax, whether levied for the use of the highways or upon the use of gasoline. For whatever significance it may have, we call attention to the fact that the title of Chapter 29, Laws of 1929, uses the words "excise tax upon the use of gasoline". (See Appendix "F", page 38, Appellee's Brief.)

As pointed out in our original brief, we cannot see what difference it makes whether the exaction for the use of the highways be called a "tax", an "excise tax", a "charge", a "toll" or by any other name.

## APPELLANTS' REPLY TO PROPOSITIONS OF LAW RAISED BY APPELLEE'S POINT II.

Appellee in its response to Appellants' Point II advances two arguments to the effect that the 1931 refunding act and the amendments thereto do not change the character of the New Mexico gasoline tax laws. The first of these is that the refunding law applies only to the sales tax and not to the use tax and therefore could not change the character of the use tax. The second is that the character of neither the sale nor the use tax could be changed by the refunding law on account of Section 18 of Article IV of the New Mexico Constitution.

Reference is made to the title of the act and it is pointed out that under the terms of the act, in order to obtain a refund, the tax must be paid "to a distributor or wholesaler upon fifty-six (56) gallons or more of gasoline or motor fuel". This contention was not made in the trial court and was never argued there. The administrative construction of the refunding act has uniformily been to refund the use tax when it has been paid to the state even though the gasoline on which it was paid was not pur-

chased in the state. Proof of this administrative construction does not appear in the record because there was no occasion to introduce such proof. In the event this Court should consider the point to be decisive of the case, we feel that it should remand the cause to the lower court to give appellants an opportunity to present proof of this administrative construction.

Considering only the language of the statute, if it is strictly construed, possibly a refund can be made only in cases where there has been a purchase and sale and the tax has been paid to "a distributor or wholesaler". While the word "distributor" is defined in Section 6, Chapter 96, Laws of 1929, (See Appendix "1" of this brief), and Section 1, Chapter 176, Laws of 1933, we find no statutory definition of the word "wholesaler" at the time of the enactment of the 1931 refunding law or any of the amendments thereto. The refunding act does not specifically require that the excise tax be paid to a wholesaler *within the state*. We do not think it is wholly inconceivable that a refund might be made even under the strict terms of the statute in a case where a person bought gasoline from a wholesaler outside of the state, used the gasoline in this state other than in motor vehicles operated or intended to be operated on the public highways of New Mexico and paid the tax to such non-resident wholesaler. In such a case it seems that every requirement of the act could be met in order to obtain the refund. One answer would be that no tax would accrue at the time of such a purchase but if the purchaser intended at the time to use the gasoline in New Mexico we see no reason why he could not pay the tax in advance and he might even pay the tax to such non-resident wholesaler after he had made the non-taxable use of it in this state. If this construction of the act is not proper, it is difficult to see why the word "wholesaler" was used in the refunding act at all since the word "distributor" as defined in the acts referred to is sufficiently broad to cover all wholesalers in this state engaged in the business of selling gasoline.

It is doubtless true that the legislature in passing the refunding act took into consideration the commonly known fact that practically all of the major oil companies opera-

ting in bordering states also operate in New Mexico and there would be very few cases indeed where persons using gasoline in this state off the highways and purchasing the same in quantities of fifty-six (56) gallons or more would purchase it from a wholesaler not duly licensed here as a distributor. The quantities thus used would be so negligible as to hardly deserve specific attention by the legislature.

In this connection we should bear in mind that the tax on sales and the tax on use are very closely related. Under the provisions of the 1933 act as well as its predecessors, the payment of the sales tax avoids payment of the use tax on the same gasoline and vice versa. Only one tax can be collected "upon any particular motor fuel". (See Section 2, Chapter 176, 1933 Session Laws of New Mexico.) In other words, the payment of one tax amounts to a payment of both taxes. Thus the refund of one tax would amount to a refund of both. In practically every case before a sale is made some use of the gasoline has also been made, if nothing more than its storage and withdrawal. Even though the tax is paid at the time of the sale, it is hardly accurate to say that it is the sales tax that is paid and not the use tax because at that time both a sale and a use have been made, either one of which and both of which are taxable.

The Court should take judicial knowledge of the fact that the sales tax for all practical intents and purposes is the important one of the two taxes and the one from which the overwhelming part of the revenue is derived. The use tax is only supplementary to the sales tax for the purpose of preventing an evasion of the sales tax.

> "The obvious purpose of the use tax in this state is to supplement the sales tax, rendering it impossible legally to avoid the latter by purchasing out of the state for use in the state." Breece Lumber Company vs. Mirabal, supra.

When both the sale and use tax are imposed at the same rate and the payment of one discharges the obligation of the other, it is readily seen that in practice very little use tax will be paid but that instead persons using gasoline

within the state will buy it here also. Both the use tax and the sales tax are imposed by a single sentence of the law. Both are referred to as excise taxes. The refunding law also refers to "excise taxes" and not specifically to "sales tax". The two taxes are so closely allied that the character of the principal one must control the character of the supplementary one. The majority opinion of the lower court in this case recognized this close relationship when it said in discussing Transcontinental & Western Air, Inc., vs. Lujan, supra:

> "It cannot be a tax for airplanes and a charge for busses. It is one or the other. True, it was the sales tax there involved, and not the use tax. But where the statute imposes 'an excise tax upon the sale and use', it is hair-splitting to say that 'excise tax' means what it says with reference to 'sale' and an entirely different thing with reference to 'use' in the same breath."

We submit that it would border on the ridiculous to reach a conclusion that a tax on gasoline bought within the State of New Mexico and used on our highways is in the nature of a charge for the use of such highways while a tax on gasoline bought without the state but used exactly in the same manner is an entirely different sort of tax.

We hardly think it is necessary to suggest reasons why the legislature did not in specific terms provide for a refund of the use tax. Many obvious reasons can be advanced. The cases in which a use tax would be incurred where there had been no purchase and sale would be so few as to render the making of refunds in such cases a task involving many administrative difficulties. The making of refunds in such cases would also open the door to fraud and imposition. It is doubtless true that even as the act is written and now administered, many cases arise where unscrupulous persons have obtained refunds to which they are not entitled. In order to prevent such fraud and imposition, the legislature in 1933 enacted Chapter 162 of the Session Laws of that year, Section 2 of which provides that in cases where gasoline is sold for use off the highway,

the seller shall "color black all such gasoline or motor fuel at the time of the sale and purchase". (See Appendix "2" of this brief.). This safeguard can hardly be made applicable in a case where the gasoline was not used on the highways but there was no purchase and sale within this state. To attempt to apply it in such a case would be to require the person who might practice fraud or imposition to perform an act intended to prevent his own fraud.

After all, it seems to us that the point raised by appellee has very little to do with whether or not appellants' position is well taken. The only relevancy which the 1931 refunding act has to the case in hand is to indicate the nature of the tax which the 1933 legislature intended to impose by Chapter 176 of the Session Laws for that year. It can not be successfully disputed that the 1931 refunding act provides a means by which practically all persons not using gasoline on the highways can escape both the use tax and the sales tax. If that means which is provided be not absolutely perfect so as to take care of every conceivable hypothetical case which might be advanced, the appellee is not in a position to complain since it is not so situated as to be entitled to a refund in any case. The refunding act may not be artistically drawn but we are not concerned with that. It is the broad purpose of the act which seems to us of importance. In adopting the refunding act, the New Mexico legislature certainly considered that persons not using the highways and therefore deriving no benefit from the proceeds of the tax should not be burdened by it. It was undoubtedly the purpose of the legislature to relieve such persons from the tax burden which they had theretofore borne and even though its efforts in that direction may not have been entirely successful, nevertheless the very existence of such a purpose would seem sufficiently indicative of the nature of the gasoline tax from that time forward.

Appellee's second contention or argument under this point, as stated above, is that the refunding act could not change the character of either the use or the sales tax on account of Section 18 of Article IV of the New Mexico Constitution. This section, which is quoted in appellee's

brief, page 24, does not, in our opinion, have any bearing whatever upon the matter here under consideration. In this instance there is no contention that the refunding act attempted to extend, amend or revise any existing law by reference only. The situation here is that the refunding act of 1931 was already in existence when Chapter 176 of the 1933 Session Laws was passed and it is only with Chapter 176, Laws of 1933, that we are immediately concerned here. Since the refunding act was already in existence upon the passage of that law, courts should construe the two existing statutes together in arriving at a construction of the gasoline tax law in its entirety.

## APPELLANTS' REPLY TO PROPOSITIONS OF LAW RAISED BY APPELLEE'S POINT V

Appellee under Point V of its Answer Brief argues that Chapter 176, New Mexico Session Laws of 1933, is unconstitutional in so far as it attempts to "domesticate" appellee. In the Propositions of Law, appearing at page 3 of Appellee's Brief, is shown a brief resume of the things required of a distributor by said law.

Appellee correctly states in his brief that this point was properly before the lower court for a decision. We agree to this but submit that the point was decided by the lower court (Tr. 35) as follows:

> "Administrative provisions of the statute, incidentally attacked, seem appropriate to the enforcement of the statute. They do not require plaintiff to do business in New Mexico."

We submit that since no cross appeal was taken by appellee this question is not now properly reviewable in this Court.

As we understand it, appellee's main contention is that it cannot be compelled to take out a distributor's license in the State of New Mexico and to file a bond to secure the payment of the taxes which may become due to the state. The obvious purpose of requiring "distributors" to be

licensed and to post bond is to insure the gasoline taxes being reported and paid to the state. While it is true that the statute complained of requires a copy of the certificate permitting it to do business in New Mexico to be attached to the application for a distributors license, we recognize that this provision could not be applied to appellee engaged only in interstate commerce, and defendants in this case never intended and do not now intend to apply this provision to appellee. The mere fact that the law provides a single act among others which might be unconstitutional as applied to one individual or corporation does not invalidate the main purpose of the act when there is no attempt made to enforce the unconstitutional provision, and appellants' statements to the effect that no attempt will be made to so enforce an unconstitutional provision is sufficient. Clark vs. Poor, 274 U. S. 554, 71 L. Ed. 1199. We realize that this provision was perhaps not sufficiently taken care of in the stipulation of facts for it was stipulated generally that appellants intended to force appellee to comply with the provisions of said Chapter 176. It was not, however, specifically stipulated that the appellants ever intended to compel appellees to "domesticate" within New Mexico and we state now to the Court that it has not ever been and is not now the intention to do this.

The only portion of Chapter 176, Laws of 1933, which will be material to enforce upon appellee with respect to its distributor's license is that it obtain such license and post a bond as provided in the statute to insure the reporting and payment of the amount of taxes due the state. If there are any other provisions in this regard which would be unconstitutional as applied to a corporation or individual engaged strictly in interstate commerce, we have no objection to a decree of injunction enjoining the defendants from attempting to enforce these specific unconstitutional provisions of the act.

## CONCLUSION

We therefore submit that the appellee has failed to successfully answer the propositions of law raised by ap-

pellant and that the decision of the lower court should be reversed.

Respectfully Submitted,

FRANK H. PATTON,
Attorney General.
Santa Fe, New Mexico.

J. R. MODRALL,
Assistant Attorney General.
Santa Fe, New Mexico.

QUINCY D. ADAMS,
Assistant Attorney General.
Santa Fe, New Mexico.
Attorneys for Appellants.

## APPENDIX "1"

Chapter 96, Laws of 1929

AN ACT RELATING TO EXCISE TAXES UPON SALE OR USE OF GASOLINE AND MOTOR FUEL AND AMENDING SECTION 1 OF CHAPTER 175 OF THE LAWS OF 1921 ENTITLED "AN ACT TO RETROACTIVELY AND PROSPECTIVELY LEVY AN EXCISE TAX ON GASOLINE; PROVIDE FOR THE DISTRIBUTION OF THE PROCEEDS THEREOF, AND TO REPEAL CERTAIN LAWS."

********

Section 6. * * * * The term "Distributor of Gasoline" means a person engaged in the business of selling gasoline or motor fuel in this state from refineries, tank farms, tank cars, receiving tanks or stations or in or from tanks, barrels, drums or other containers in quantities exceeding fifty-six gallons in any one sale and delivery except persons engaged in selling exclusively in interstate commerce.

## APPENDIX "2"

Chapter 162, Session Laws of 1933.

AN ACT TO AMEND SECTIONS 1, 2, 3 AND 7 OF CHAPTER 31 OF THE LAWS OF 1931, BEING "AND ACT TO PROVIDE FOR REFUNDING THE EXCISE TAXES PAID ON GASOLINE OR MOTOR FUEL PURCHASED AND USED BY CONSUMER OTHER THAN IN MOTOR VEHICLES OPERATED OR INTENDED TO BE OPERATED ON ANY OF THE PUBLIC STREETS OR HIGHWAYS OF THE STATE OF NEW MEXICO; PROVIDING FOR THE KEEPING OF RECORDS IN CONNECTION THEREWITH, THE EXAMINATION THEREOF AND PENALTIES FOR THE VIOLATION OF ANY OF THE TERMS OF THIS ACT, AND FOR THE REVOCATION OF LICENSES FOR VIOLATIONS THEREOF; AND CREATING A SPECIAL SUS-

PENSE FUND TO CARRY OUT THE PROVISIONS OF THIS ACT."

H. B. No. 230; Approved March 15, 1933.

Be It Enacted by the Legislature of the State of New Mexico:

Section 1. That Section 1 of Chapter 31 of the Laws of 1931, be and the same is hereby amended to read as follows:

"Section 1. That every person, firm, partnership, corporation or association having paid for any one purchase, the excise tax to a distributor or wholesaler upon *fifty* (50) or more gallons of gasoline or motor fuel, which gasoline or motor fuel was purchased and used *solely* and exclusively by such person, firm, partnership, corporation or association other than in motor vehicles operated or intended to be operated upon any of the public streets or highways in the State of New Mexico, shall be entitled to a refund equal to the amount of tax so paid, upon compliance with the provisions of this Act, and not otherwise."

Sec. 2. That Section 2 of Chapter 31 of the Laws of 1931, be and the same is hereby amended to read as follows:

"Section 2. Every person, firm, partnership, corporation or association desiring to take advantage of the provisions of this act shall at the time of purchase and payment of tax, obtain a receipt for each and every purchase of gasoline or motor fuel from the wholesale dealer or distributor thereof, which receipt shall contain the name of the seller, his address, the name of the purchaser, his address, occupation, the quantity and grade of gasoline or motor fuel purchased, the amount of tax paid, the uses to which the purchaser intends to put such gasoline or motor fuel, the make, horsepower, and other mechanical description of machinery in which the same is to be used, and such other information as may be deemed necessary by the State Comptroller, and such receipt shall be signed in triplicate, two copies of which shall be carbon, by the seller and the purchaser or his or its duly authorized agent or agents.

The forms of receipts shall be furnished by the State Comptroller, upon request, to wholesale dealers or distributors entitled thereto, and shall be printed in colors, the original to be retained by the seller or distributor as herein provided shall be green in color and the duplicate and triplicate may be of any other colors so as to make the same easily distinguishable. After the due execution of said receipts as herein provided, the seller shall return the duplicate to the purchaser and shall deliver the original green copy within thirty days to the State Comptroller. *Provided, further, that the seller shall color black all such gasoline or motor fuel at the time of sale and purchase, which coloring shall be furnished by the State Comptroller, without cost to all sellers, and it shall be unlawful for any one to use such colored gasoline or motor fuel in any motor vehicle operated or intended to be operated upon any of the public streets or highways of the State of New Mexico; providing, however, that any person, firm, partnership, corporation or association operating a clothes cleaning establishment may, upon proper showing, purchase gasoline which shall not be colored as herein required.*

Sec. 3. That Section 3 of Chapter 31 of the Laws of 1931, be and the same is hereby amended to read as follows:

"Section 3. Upon the payment of the tax thereon, and at any time within four months after the date of the first purchase of any portion of the gasoline or motor fuel constituting any portion of the *100* gallons for which refund may be claimed under the provisions of this Act, the purchaser may file an affidavit to be attached to the receipt returned to him, as provided in Section 2 of this Act, which affidavit shall be sworn to under oath by the claimant before an officer authorized to administer oaths and shall state the quantity of such motor fuel so purchased and used by said claimant other than in motor vehicles operated or intended to be operated upon any of the public streets or highways of the State of New Mexico, with the State Comptroller requesting therein a refund of the tax paid; *Provided,* applications shall in no event be considered

or allowed upon a total quantity of less than *one* hundred gallons of gasoline or motor fuel. For the purpose of carrying out the provisions of this Act, the receipt, when attached to said affidavit, shall become a part thereof and shall be interpreted as such and have that effect. The said State Comptroller, upon presentation of said affidavits and receipts duly executed, shall cause to be refunded to said claimant consumer, from the gasoline or motor fuel taxes collected, an amount equal to the gasoline or motor fuel taxes paid by said claimant consumer on the gasoline or motor fuel so purchased and used. No application filed after the four months' period prescribed in this Section shall be considered for any purpose by the State Comptroller or the treasurer of the State of New Mexico."

Sec. 4. That Section 7 of Chapter 31 of the Laws of 1931, be and the same is hereby amended to read as follows:

"Section 7. Any person, firm, partnership, corporation, association or any officer or agent thereof, acting either as seller or purchaser, or in their behalf, who wilfully gives, signs or executes a false receipt or aids in the falsifying of a receipt, as provided for in this Act, or who wilfully fails to keep a full and complete record as in this Act provided, *or who fails or refuses to color the motor fuel or gasoline as required by this Act or who uses such colored gasoline or motor fuel in any motor vehicle operated or intended to be operated upon the public streets or highways of this State,* shall be guilty of a felony and shall be punished by a fine of not less than five hundred ($500.00) dollars nor more than one thousand ($1,000.00) dollars, or by imprisonment in the state penitentiary for not less than one nor more than two years, or by both such fine and imprisonment."

## APPENDIX "3"

Chapter 154, Laws of 1919. (Sec. 64-316, Compilation of 1929.)

AN ACT TO AMEND SECTIONS 15 and 16 of CHAPTER 38 OF THE SESSION LAWS OF 1917, BEING AN ACT RELATING TO PUBLIC HIGHWAYS AND BRIDGES.

* * * * Subject to the provisions of Section 4579 (109-205), New Mexico Statutes, Codification of 1915, after providing for interest and sinking fund upon state highway bonds authorized and issued in accordance with Chapter 58 of the Session Laws of 1912 by setting aside sufficient funds therefor each year out of the proceeds of the said one mill tax levy or out of moneys received from sales of certificates or debentures issued in anticipation thereof, it shall be the duty of the state treasurer to set aside from the moneys received from collection of the taxes and licenses pledged therefor sufficient funds to provide for the payment of the interest and principal of all certificates or debentures issued under the provisions of this act.

There shall next be reserved from the state road fund a sufficient sum annually based upon estimates by the state highway engineer, to cover all expenses of the commission, salaries of officers and employees, and to pay the state's portion of the cost of maintaining the system of state highways herein provided for. The balance of the moneys in the state road fund shall be used as the commission shall determine for co-operating with the United States government or with the several counties or municipalities of the state or otherwise, in the discretion of the commission, for the construction, improvement, or maintenance of public highways and bridges.

## APPENDIX "4"

Chapter 144, Laws of 1931.

AN ACT RELATING TO STATE HIGHWAY DEBENTURES.

* * * *

Section 1. The State Highway Commission of the State of New Mexico is hereby authorized to anticipate the proceeds of the collection of any or all of the gasoline excise taxes, motor vehicle registration fees and property and other taxes to the extent to which it is provided by law that the proceeds of the collection of such fees and taxes shall be covered into the State Road Fund and to the extent that the same are not otherwise pledged by the issuance and sale of bonds or debentures heretofore sold and now outstanding, by the issuance and sale of state highway debentures in such amounts, not exceeding in the aggregate TWO MILLION Dollars ($2,000,000.00), at such times and bearing such rate of interest, not exceeding six per centum per annum, as said Commission may determine; provided, that not to exceed in the aggregate Two Million Dollars ($2,000,000.00) par value of such debentures shall be issued either under authority hereof or other authority, and that no such debentures shall be issued after December first, 1932.

Said debentures shall be issued in serial form and mature at stated periods not exceeding ten years from the date of issuance.

Said debentures shall be signed by the President of said Commission, attested by its Secretary, with the seal of the Commission thereunto affixed, and shall be countersigned by the Treasurer of the State of New Mexico, and may have coupons attached bearing the facsimile signature of the Treasurer of the State of New Mexico for semi-annual instalments of interest.

* * * *

Sec. 3. Said debentures shall be sold by the State Board of Finance to the highest bidder for cash at not less than par and accrued interest at such times and in such amounts as may be determined by said Commission after advertising the time and place of sale by notice published for four consecutive weeks in one newspaper published in the city of Santa Fe, State of New Mexico and one newspaper published in the city of New York, State of New York, the first publication to be not less than thirty days prior to the date of sale.

At the time and place stated in said notice, the said Board of Finance shall open the bids in public and may award said debentures to the bidder or bidders offering the highest price, not less than par and accrued interest, or offering to purchase said debentures at par and accrued interest at the lowest rate of interest.

Said Board shall require as security for compliance with the terms of each bid the deposit of a certified check equal to two per centum of the amount of the bid, on some solvent bank or trust company, payable to the order of the Treasurer of the State of New Mexico, as a guaranty that the debentures will be paid for by the bidder, to be forfeited in case the bidder fails to pay for the debentures in accordance with his bid, if the debentures be awarded to him.

The cost of such advertisement shall be paid out of the State Road Fund upon warrant issued by the State Auditor. The proceeds of the sale of said debentures shall be paid into the State Treasury, shall be covered into the State Road Fund and shall be used and disbursed in the same manner as other monies in said fund.

* * * *

## APPENDIX "5"

Chapter 30, Session Laws of 1933.

AN ACT RELATING TO STATE HIGHWAY DEBENTURES.

Section 1. The State Highway Commission of the State of New Mexico is hereby authorized to anticipate the proceeds of the collection of any or all of the gasoline excise taxes, motor vehicle registration fees and property and other taxes to the extent to which it is provided by law that the proceeds of the collection of such fees and taxes shall be covered into the State Road Fund and to the extent that the same are not otherwise pledged by the issuance and sale of bonds or debentures heretofore sold and now outstanding, by the issuance and sale of state highway debentures in such amounts, not exceeding in the aggregate *Two Million* Dollars ($2,000,000.00), at such times and bearing

such rate of interest, not exceeding six per centum per annum, as said Commission may determine; *Provided,* that not to exceed in the aggregate Two Million Dollars ($2,000,000.00) par value of such debentures shall be issued either under authority hereof or other authority, and that no such debentures shall be issued after December first, 1934.

Said debentures shall be issued in serial form and mature at stated periods not exceeding ten years from the date of issuance.

Said debentures shall be signed by the President of said Commission, attested by its Secretary, with the seal of the Commission thereunto affixed, and shall be countersigned by the Treasurer of the State of New Mexico, and may have coupons attached bearing the fac-simile signature of the Treasurer of the State of New Mexico for semi-annual instalments of interest.

* * * *

Sec. 3. Said debentures shall be sold by the State Board of Finance to the highest bidder for cash at not less than par and accrued interest at such times and in such amounts as may be determined by said Commission after advertising the time and place of sale by notice published for four consecutive weeks in one newspaper published in the city of Santa Fe, State of New Mexico and one newspaper published in the city of New York, State of New York, the first publication to be not less than thirty days prior to the date of sale.

At the time and place stated in said notice, the said Board of Finance shall open the bids in public and may award said debentures to the bidder or bidders offering the highest price, not less than par and accrued interest, or offering to purchase said debentures at par and accrued interest, or offering to purchase said debentures at par and accrued interest at the lowest rate of interest.

Said Board shall require as security for compliance with the terms of each bid the deposit of a certified check equal to two per centum of the amount of the bid, on some solvent bank or trust company, payable to the order of the Treasurer of the State of New Mexico, as a guaranty that the debentures will be paid for by the bidder, to be forfeited in case the bidder fails to pay for the debentures in

accordance with his bid, if the debentures be awarded to him.

The cost of such advertisement shall be paid out of the State Road Fund upon warrant issued by the State Auditor. The proceeds of the sale of said debentures shall be paid into the State Treasury, shall be covered into the State Road Fund and shall be used and disbursed in the same manner as other monies in said fund.

* * * *